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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JOSHUA POKEMPNER, JONATHAN WRIGHT  
and  
KELLIE HERBERT

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Appeal 2009-0611  
Application 10/733,828  
Technology Center 3700

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Decided:<sup>1</sup> April 15, 2009

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Before JAMES T. MOORE, *Vice Chief Administrative Patent Judge*, and  
JAMESON LEE and SALLY C. MEDLEY, *Administrative Patent Judges*.

MOORE, *Vice Chief Administrative Patent Judge*.

DECISION ON APPEAL

1

2 STATEMENT OF THE CASE

3 The Appellants appeal under 35 U.S.C. § 134 (2002) from a final  
4 rejection of claims 1-4 and 6-72.<sup>2</sup> We have jurisdiction under 35 U.S.C.  
5 § 6(b) (2002).

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 CFR § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from Mail Date (paper delivery) or Notification Date (electronic delivery).

Appeal 2009-0611  
Application 10/733,828

1       The Appellants' claims are directed to activity kits, such as would  
2 include paper, pen, and other materials for keeping children amused while  
3 traveling in cars.

4       For the anticipation rejection, the Appellants argue the rejected claims  
5 57-60, 62-64 and 67-71 together as a group.

6       We select independent claim 57 to decide the appeal regarding the  
7 rejections under 35 U.S.C. § 102(b).

8       For the obviousness rejections, the Appellants argue the following  
9 groups of claims:

10       Claims 1-4, 6-8, 11-22, 25-29 and 61;

11       Claims 9, 10, 23 and 24;

12       Claims 30-33, 35-37, 49-56, 65 and 66;

13       Claims 34-48.

14       We select claims 1, 9, 30 and 34 as the representative claims from  
15 their respective groups to decide the appeal regarding the rejections under 35  
16 U.S.C. § 103(a). See 37 C.F.R. § 41.37(c)(1)(vii)(2006). Accordingly, the  
17 remaining claims stand or fall with their representative claims.

18       Claim 1 reads as follows:

19       1. An activity kit, comprising:  
20       a box for holding a set of writing implements or other materials  
21       including rubber stamps, ink pads, playing cards or flash cards,  
22       stickers or temporary tattoos;  
23       the box having front, back and side panels defining two front  
24       edges and two back edges; and  
25       a pad of paper or book having a separate back panel hinged to  
26       the box in a manner allowing the pad or book and box to fold  
27       against one another in overlying registration.

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<sup>2</sup> Claim 5 has been canceled. (App. Br. 1).

1  
2       Claim 9 reads as follows:

3       9.     The activity kit of claim 1, further including handle on  
4     one or both of the box and back panel of the pad.

5  
6       Claim 30 reads as follows:

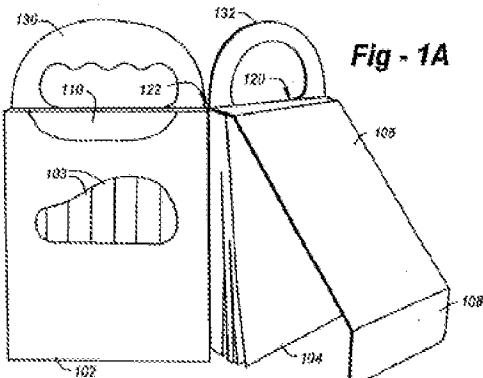
7       30.    An activity kit, comprising:  
8     a box for holding a set of writing implements or other materials  
9     a pad of paper or book having a back panel hinged to the box in  
10    a manner allowing the pad and box to fold against one another  
11    in overlying registration; and  
12    a handle on one or both of the box and back panel of the panel.

13  
14       Claim 34 reads as follows:

15       34.    The activity kit of claim 30, wherein the other  
16    materials include rubber stamps, ink pads, playing cards or  
17    flash cards, stickers, or temporary tattoos.

18  
19       (App Br. 8, 11, Claims Appendix)

20  
21       Figure 1A from the Application, reproduced below, illustrates  
22    one embodiment of the claimed activity kit. (Specification p. 2, l. 1).



23  
24  
25       {Figure 1A illustrates one embodiment  
26    of the activity kit invention (Id.)}  
27



1 Have the Appellants established that the Examiner erred in  
2 determining that it would have been obvious to one of ordinary skill in the  
3 art at the time the invention was made to combine known elements of the  
4 prior art for their known functions?

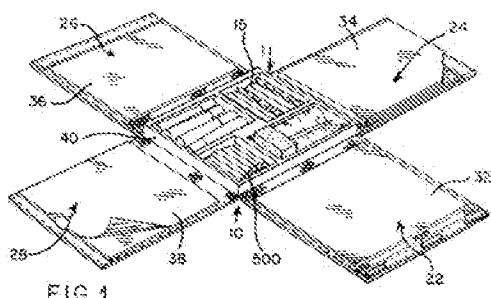
## FINDINGS OF FACT

6 The record supports the following findings of fact by a preponderance  
7 of the evidence.

8           1. Kroop describes “writing kits that provide a writing surface, offer  
9 closeable storage for writing utensils, and are portable.” (Kroop 1:7-9).

10        2. Kroop describes that “[t]he writing kits of the present invention  
11 comprise a base, a plurality of wings hingeably mounted to the base, and an  
12 external wall extending from the base to form a compartment for storage of  
13 writing implements.” (Id. 1:10-14).

14 3. Kroop figures 1 and 6 are reproduced below:



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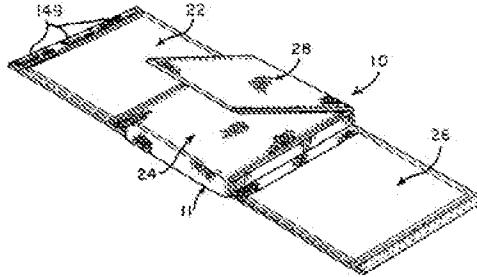


FIG. 6

{Figure 1 shows a writing kit of the invention in the open position and Figure 6 shows the process for closing the writing kit. (Id. 4:35-36)}

20           4. Kroop describes that the writing kit comprises a base 11 and a  
21 plurality of wings 22, 24, 26 and 28 hingeably mounted to the base. (Id. 52-  
22 55).

1       5. Kroop describes that hinges are formed by the engagement of  
2 flexible portion edges on wings 22, 24, 26 with the base edges. (Id. 29-31).

3       6. Kroop also describes that one or more writing surfaces 32, 34, 36,  
4 and 38, such as a pad of paper, are affixed to wings 22, 24, 26 and 28. (Id.  
5 4:63-64; 5:56).

6       7. Kroop describes that the writing kit has an external wall 40 that  
7 extends from the base 11 in a direction generally perpendicular to interior  
8 base surface 15. (Id. 4:61-63).

9       8. Additionally, Kroop describes that the interior base surface 15  
10 may contain ridges 60 adapted to receive writing utensils 500 or other  
11 writing supplies. (Id. 5:7-10).

12       9. Kroop describes that a skilled artisan will “appreciate that the kit  
13 of the present invention is portable, moveable, and provides for self-  
14 contained storage. . . .” (Id. 8:56-58).

15       10. Wilson describes a creativity center comprising a base portion  
16 connected by a hinge to a board with drawing/design work surfaces and may  
17 include a compartment for storing art supplies. (Wilson Abstract).

18       11. Wilson describes that work surfaces may incorporate material  
19 suitable for various uses, including for adhesion by stickers. (Id. 6:52-65).

20       12. Palmiter describes a carrying case having a detachable clip-board  
21 employing a pad of papers. (Palmiter 1:1-6).

22       13. Palmiter describes that the case may include a carrying handle  
23 sewn into the intersection of the edge and external surface of the case and  
24 may also include a mirror-image carrying handle likewise attached. (Id.  
25 5:45-47).

1 PRINCIPLES OF LAW

2 “[C]laims in an application are to be given their broadest reasonable  
3 interpretation consistent with the specification and [the] claim language  
4 should be read in light of the specification as it would be interpreted by one  
5 of ordinary skill in the art.” *In re Sneed*, 710 F.2d 1544, 1548 (Fed. Cir.  
6 1983) (citation omitted).

7 “If a person of ordinary skill can implement a predictable variation,  
8 § 103 likely bars its patentability.” *KSR International Co. v. Teleflex Inc.*,  
9 127 S. Ct. 1727, 1740 (2007).

10 ANALYSIS

11 I. The Anticipation Rejection of Claims 57-60, 62-64 and 67-71  
12 over Kroop.

13 Claims 57-60, 62-64 and 67-71 stand rejected under 35 U.S.C. §  
14 102(b) as being anticipated by Kroop.

15 The Examiner found that Kroop describes “an activity kit comprising  
16 a box for holding a set of writing implements (500) or other materials and a  
17 pad of paper having a separate back panel (98) hinged to the box in a manner  
18 allowing the pad and box to fold against one another in overlying  
19 registration. . . .” (Final Rejection, Mar. 7, 2006, p. 2).

20 The Appellants assert that the Examiner erred in rejecting the claims  
21 because the structure in Kroop “that what the Examiner is calling a ‘box’  
22 actually only has back and side panels, and does *not* include a front panel.”  
23 (App. Br. 3) (emphasis in original). According to the Appellants, “a point of  
24 novelty of the Kroop invention is that the pads of paper be folded onto the

1 box, thereby forming a multilayer ‘front panel’ that otherwise did not exist.”  
2 (Id. p. 4).

3 It is well settled that “claims in an application are to be given their  
4 broadest reasonable interpretation consistent with the specification and [the]  
5 claim language should be read in light of the specification as it would be  
6 interpreted by one of ordinary skill in the art.” *In re Sneed*, 710 at 1548.  
7 We first need examine the language of the instant claim. We find that the  
8 specification does not specifically define the claim term “front” panel, which  
9 term, broadly construed, is relative to the orientation of the box. Therefore,  
10 we construe the term “front” panel broadly to describe any front-facing  
11 panel or wall. It is the applicants’ burden to precisely define the invention,  
12 not the PTO’s. *In re Morris*, 127 F.3d 1048, 1056 (Fed. Cir. 1997).

13 The Appellants have not directed us to any persuasive evidence that  
14 the term “front panel” should be narrowly interpreted as a static top panel or  
15 in any other manner so as to exclude its application to one of the external  
16 walls 40 of the Kroop box.

17 Consequently, we find that the Appellants have not established that  
18 the Examiner erred in determining that Kroop describes a “front” panel, as  
19 claimed.

20 II. The Obviousness Rejection of Claims 1-4, 6-8, 11-22, 25-29  
21 and 61 over the combination of Kroop and Wilson.

22 Claims 1-4, 6-8, 11-22, 25-29 and 61 stand rejected under 35 U.S.C. §  
23 103(a) over the combination of Kroop and Wilson. The Examiner found that  
24 Wilson describes “an activity kit using stickers.” (Final Rejection, p. 4)  
25 (citing Wilson 6:65). According to the Examiner, it would have been

1 obvious for a person having ordinary skill in the art at the time of the  
2 invention to provide the activity kit of Kroop with stickers because the  
3 “modification would add greater versatility to the activity kit.” (Id.).

4 The Appellants assert that the Examiner erred in rejecting the claims  
5 for the same reason asserted regarding the anticipation rejections, i.e., that  
6 Kroop allegedly does not describe a box having a “front” panel. (App. Br.  
7 4). Consequently, we find that the Appellants have not established error on  
8 the part of the Examiner for the same reasons discussed, *supra*, regarding the  
9 anticipation rejection.

10       III. The Obviousness Rejections of Claims 9, 10, 23 and 24 over  
11 the combination of Kroop, Wilson and Palmiter and Claims 30-33, 35-47,  
12 49-56, 65 and 66 over the combination of Kroop and Palmiter.

13       Claims 9, 10, 23 and 24 stand rejected under 35 U.S.C. § 103(a) over  
14 the combination of Kroop, Wilson and Palmiter. Additionally, claims 30-33,  
15 35-47, 49-56, 65 and 66 stand rejected under 35 U.S.C. § 103(a) over the  
16 combination of Kroop and Palmiter. In addition to the findings discussed,  
17 *supra*, the Examiner further found that Palmiter describes a portable case  
18 having a pair of handles. (Final Rejection, p. 5). The Examiner determined  
19 that it would have been obvious to a skilled artisan at the time of the  
20 invention to provide the prior art activity kit with handles as taught by  
21 Palmiter to allow the kit “to be carried or transported easily.” (Id.).

22       The Appellants challenge the Examiner’s rejection, asserting that  
23 “there is no teaching or suggestion from the prior art to provide handles with  
24 through-holes as taught by Palmiter et al. to the Kroop et al. article. . . .”  
25 (App. Br. 5). The Appellants further assert that “it is impossible to ascertain

1 where such handles would go.” (Id.). According to the Appellants, “if a  
2 through-hole were formed, it might extend through the kit itself, thereby  
3 rendering the article unfit for its intended purpose.” (Id.).

4 This argument is unpersuasive. We find that all of the claimed  
5 elements are known and used for their intended function. “If a person of  
6 ordinary skill can implement a predictable variation, § 103 likely bars its  
7 patentability.” *KSR* 127 S. Ct. at 1740.

8 It is not in dispute that handles are well known in the art as a means of  
9 carrying readily moveable items. (See Answer p. 9). Additionally, as the  
10 Examiner stated, Kroop describes “that the kit is portable as well as  
11 moveable.” (Id.) (citing Kroop 8:57-59). Moreover, Palmiter expressly  
12 describes including such a carrying means to a portable receptacle.  
13 Therefore, evidence of a reason to combine Palmiter’s handles with Kroop’s  
14 activity kit is found in references and from the knowledge of one of ordinary  
15 skill in the art (See, e.g., *Dystar Textilfarben GmbH & Co. Deutschland KG*  
16 v. *C.H. Patrick Co.*, 464 F.3d 1356, 1366 (Fed. Cir. 2006)).

17 Further, insofar as the Appellants assert that it would be “impossible”  
18 for a skilled artisan to determine where to place carrying handles on the  
19 activity kit of Kroop without rendering the kit “unfit for its intended  
20 purpose,” we are not provided with evidence from the skilled artisan to  
21 support this argument. We therefore are unpersuaded of this allegation of  
22 error.

1        IV. The Obviousness Rejection of Claims 34 and 48 over the  
2 combination of Kroop, Palmiter and Wilson.

3        Claims 34 and 48 stand rejected under 35 U.S.C. § 103(a) over the  
4 combination of Kroop, Palmiter and Wilson. (Final Rejection, pp. 6-7).  
5 These claims depend from claims 30 and 44, respectively, which recite “a  
6 box for holding a set of writing implements or other materials. . . .” (App.  
7 Br. 11, 13, Claims Appendix). Claims 34 and 48 recite that the “other  
8 materials” include “rubber stamps, ink pads, playing cards or flash cards,  
9 stickers or temporary tattoos.” (Id.).

10       The Appellants assert that the Examiner erred in rejecting the claims  
11 because “there is no teaching or suggestion from the prior art to add these  
12 [other] materials to any of the kits described in the cited prior art,” as  
13 claimed. (App. Br. 6).

14       This argument is not persuasive. First, to the extent that the  
15 Appellants may be taking a position that it would not have been obvious to  
16 place the recited items in boxes, we note that such a position is completely  
17 without merit. Moreover, the claimed box is not specifically limited by the  
18 phrase “for holding a set of writing implements or other materials” which is  
19 a statement of intended use for the box.

20       Consequently, the Appellants have not established that the Examiner  
21 erred in rejecting the claims. We affirm the Examiner’s rejections.

## CONCLUSION

2 On the record before us, the Appellants have not shown error on the  
3 part of the Examiner. The prior art anticipates the front panel limitation of  
4 rejected claims 57-60, 62-64 and 67-71.

5 Additionally, it would have been obvious to one of ordinary skill in  
6 the art at the time the invention was made to combine the known elements of  
7 the prior art for their known functions.

## DECISION

9           The Rejection of claims 57-60, 62-64 and 67-71 as being anticipated  
10          under 35 U.S.C. § 102(b) over Kroop is AFFIRMED.

11 The Rejection of claims 1-4, 6-8, 11-22, 25-29 and 61 under 35  
12 U.S.C. § 103(a) as being unpatentable over the combination of Kroop and  
13 Wilson Reference is AFFIRMED.

14 The Rejection of claims 9, 10, 23 and 24 under 35 U.S.C. § 103(a) as  
15 being unpatentable over the combination of Kroop, Wilson and Palmiter  
16 Reference is AFFIRMED.

17 The Rejection of claims 30-33, 35-47, 49-56, 65 and 66 under 35  
18 U.S.C. § 103(a) as being unpatentable over the combination of Kroop and  
19 Palmeter is AFFIRMED.

20 The Rejection of claims 34 and 48 under 35 U.S.C. § 103(a) as being  
21 unpatentable over the combination of Kroop, Palmiter and Wilson is  
22 AFFIRMED.

Appeal 2009-0611  
Application 10/733,828

1 No time period for taking any subsequent action in connection with  
2 this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2006).

3

AFFIRMED

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8 rVB

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15 Harrisburg, PA 17108-1166